

EXHIBIT “J”

IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA

* * * * *

*

TINA LINDQUIST,

*

Plaintiff

*

Case No.

vs.

*

04-249E

HEIM L.P.,

*

Defendant

*

*

* * * * *

COPY

DEPOSITION OF

GARY MERKLE

JULY 21, 2005

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1 Q. Are you aware of the OSHA
2 regulations that Corry Manufacturing is
3 subjected to to place the
4 responsibility for choosing the
5 appropriate point of operation safety
6 device for mechanical press brakes on
7 the employer?

8 A. I don't know.

9 Q. Is there anyone else at Corry
10 who would have familiarity with that
11 rule and know that that is, in fact,
12 the ---

13 A. No.

14 Q. --- case?

15 A. No.

16 Q. If you don't know it and no one
17 else does it, is it safe to say that no
18 one at Corry Manufacturing knows ---?

19 A. Time out. Time out. We need to
20 go back --- I would have to look at the
21 regulation to answer that question.
22 That's the end.

23 Q. So as you sit here today, you
24 don't know that; is that fair to say
25 then?

1 A. We're responsible for guarding.
2 That's your question. We're
3 responsible to put the proper guarding
4 in place.

5 Q. That isn't my question. Under
6 OSHA they place that responsibility on
7 the employer?

8 A. Yes.

9 Q. Okay. And I noticed on the
10 warning that was affixed to the
11 machine, it also indicates that it is
12 the employer's responsibility to
13 implement the above and also to provide
14 proper dies, devices or means that may
15 be necessary or required for any
16 particular use, operation, set-up or
17 service. So that's also contained on
18 the machine itself; is that right?

19 A. Yes.

20 Q. Does that make sense to you,
21 that it would be the employer's
22 responsibility to provide the
23 appropriate safety device commensurate
24 with the use to which the press brake
25 is being put?

1 A. Yes.

2 Q. Do you know of any way that the
3 manufacturer of a product in 1978 could
4 provide a safety device, a point of
5 operation safety device, that is good
6 for every possible use to which a
7 multi-use press brake might be put? Do
8 you know of any way that could be done?

9 A. No.

10 Q. Were you involved in the OSHA
11 investigation?

12 A. No. I was not here at the time.

13 Q. Were you --- where were you?

14 A. Vacation.

15 Q. Okay. Mr. Dietz is on vacation
16 now. We pulled him from that, but
17 again, it is a serious incident. Did
18 you have any conversations with any
19 OSHA representative regarding this
20 incident?

21 A. Yes.

22 Q. And with whom?

23 A. I'd have to look at the reports
24 to see who the individual was. Beverly
25 Spar (phonetic) maybe.

1 Q. Corry was cited for this;
2 weren't they?

3 A. Yes.

4 Q. What were they cited for?

5 A. I'd have to look at the
6 documents. I can't remember.

7 Q. Okay. Do you know how this
8 accident happened?

9 A. Not firsthand.

10 Q. What have you heard about how it
11 happened?

12 A. Be more specific.

13 Q. You said you don't know
14 firsthand, but I'm assuming you've
15 heard something about how it happened?

16 A. Yeah. I investigated it after
17 the fact.

18 Q. Who did?

19 A. I did.

20 Q. And what did you find out during
21 your investigation? I appreciate that
22 request for clarification.

23 A. Pardon?

24 Q. I appreciate your request for
25 clarification on my confusing question.

1 What did you learn in your
2 investigation?

3 A. That the employee had put her
4 hands inside the die and the press came
5 down.

6 Q. From what we have seen on the
7 warnings that were affixed to the
8 machine, the operator is instructed to
9 never place their hands inside that die
10 area; is that right?

11 A. Yes.

12 Q. So what she was doing was
13 violating the first warning that was
14 affixed to the machine; is that right?

15 A. Yeah.

16 Q. And then have you --- I may have
17 asked you this, and I apologize. Have
18 you ever read the parts and
19 instructions manual to this?

20 A. I've looked at it, yes.

21 Q. Throughout the manual it
22 repeatedly warns and instructs the user
23 to never place their fingers or hands
24 inside that die area. Have you noticed
25 that at all throughout this ---

1 Q. The next one says die designed
2 to eliminate hand in die situations.
3 And what are you referring to then?

4 A. When they design the die so that
5 you never have to put your hands inside
6 of it.

7 Q. And that would be something like
8 you thought might have happened ---

9 A. With a swing arm.

10 Q. --- with the swing arm for a
11 mandrel?

12 A. Correct.

13 Q. And did that ever take place?
14 Did that occur?

15 A. That's occurring ongoing, as
16 they design the dies.

17 Q. Even to this day, ---

18 A. Yes.

19 Q. --- to avoid, in all situations,
20 where an operator has to put their
21 hands in the die area?

22 A. That's correct.

23 Q. Do you know, do all --- what
24 types of presses do you have here? Who
25 are the makers of the presses besides

1 Q. --- areas at all times, ---

2 A. Yes.

3 Q. --- such as instructed on the
4 machine and in the instructions manual?

5 ATTORNEY ROBINSON:

6 I don't know if I marked
7 this one exhibit or not.

8 BY ATTORNEY ROBINSON:

9 Q. I'll show you what we'll mark as
10 Corry Exhibit X.

11 (Corry Exhibit X marked
12 for identification.)

13 BY ATTORNEY ROBINSON:

14 Q. You mentioned the disposal or at
15 least Corry getting rid of the machine
16 the press brake at issue here. Does
17 this relate to that process?

18 A. Yes.

19 Q. And does this tell us when Corry
20 disposes of the machine?

21 A. Yes.

22 Q. And when was it?

23 A. November of 2003.

24 Q. And does this tell us if the
25 foot switch --- I don't think I asked

1 you this. Did Corry sell the foot
2 switch with the machine?

3 A. I don't believe so.

4 Q. You think that Corry kept the
5 foot switch?

6 A. I think we took the foot switch
7 off that day.

8 Q. And then what happened to the
9 foot switch?

10 A. I don't know.

11 Q. Who would know what happened to
12 the foot switch after it was removed
13 form the press brake?

14 A. I have no idea.

15 Q. I see here --- if you look at
16 Exhibit I, does this appear to be an
17 invoice from Pinnacle relative to the
18 purchase of the light curtains that
19 Corry purchased and installed after
20 this incident?

21 A. It appears that way, yeah.

22 Q. And is the total price \$2,167
23 --- excuse me, \$2,196.07?

24 A. Yeah.

25 Q. All right. And then I see

1 another --- well, what's Exhibit --- is
2 that a J? Yes. What is Exhibit J?

3 A. It appears like another order
4 for a light curtain.

5 Q. And this is on Corry
6 Manufacturing's letterhead; right?

7 A. Yes.

8 Q. It actually coincides with the
9 Pinnacle letterhead, is that right,
10 Exhibit I?

11 A. Yes.

12 Q. Do you know how much this press
13 brake cost new in 1978?

14 A. No idea.

15 Q. Do you know if any manufacturers
16 supplied light curtains back in 1978?

17 A. No.

18 Q. No, you don't know, or no, they
19 did not?

20 A. I don't know.

21 Q. Okay. Do you know if OSHA
22 considered light curtains to be an
23 acceptable point of operation safety
24 device in the time this press brake was
25 sold in 1978?

1 A. No. I don't know.

2 Q. Was the two-palm control sold
3 with the press brake in November of
4 2003?

5 A. I believe so.

6 Q. Were you involved in that sale?

7 A. Yes.

8 Q. And who did you sell it to?

9 A. Daylin (phonetic) Solutions.

10 Q. And where are they located?

11 A. Indiana, PA.

12 Q. Is that a warehousing company
13 for industrial equipment?

14 A. No.

15 Q. What is it?

16 A. They're a distributor for
17 various different types of equipment.

18 Q. Do you recall anything else
19 being sold with the press brake other
20 than the press brake itself in that
21 two-palm control?

22 A. I'm trying to think if we left
23 the light curtains on there. I think
24 we did.

25 Q. You think you left the light

EXHIBIT “K”



Worksheet

Tue Mar 25, 2003 9:00am

Inspection Number					113172563	
Opt. Insp. Number					7c	
Establishment Name Corry Manufacturing Company						
Type of Violation	S Serious	Citation Number	01	Item/Group	001	
Number Exposed	1	No. Instances	1	REC	R Referral	
Std. Alleged Vio. 1910.0212(a)(3)(ii)						

Abatement Period	MultiStep Abatements			Final Abatement	Action Type/Dates
	PPE Period	Plan	Report		
0				Corrected During Inspection	
Abatement Documentation Required			N	Date Verified	

Substance Codes	
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AVD/Variable Information:	
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29 CFR 1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s):

(a) Building #3; Heim mechanical press brake, Model #70-6, Serial # 2176. On or about September 25, 2002, an employee sustained amputation to eight fingers while operating a foot pedal actuated, unguarded press brake.

Penalty Calculations				Adjustment Factors			Proposed Adjusted Penalty
Severity	Probability	Gravity	GBP	Size	Good Faith	History	
				EX 5			
Repeat Factor							

Employee Exposure:						
Occupation	Component Tech 1			Employer	Corry Manufacturing Company	
Nr. of Employees	1	Duration	12 weeks	Frequency	daily	
Employee Name						
Address				Phone		

Instance Description:	A. Hazard	B. Equipment	C. Location	D. Injury/Illness	E. Measurements
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4. Date/Time
9-25-03

20. Instance Description - Describe the following:

- a) Hazards-Operation/Condition-Accident: An employee placing a part on a mandrel accidentally activated the press brake by stepping on the foot pedal. Both hands were on the part at the time the press cycled. The four fingers on each hand were amputated in the accident. Surgery performed immediately after the accident allowed them to reattach 3 of the 4 fingers

on each hand. Both pinky fingers are permanently amputated. The press brake was equipped with two-hand pedestal control buttons but were not in use at the time of the accident. See company's "Internal Accident Report" and "Injury Investigation Report". The foot pedal was properly guarded at the time of the accident. This was a hands-in-die operation.

- b) Equipment: Heim 6' Mechanical Press Brake, Model No. 70-6, Serial No. 2176, and Company Machine No. 820.
c) Location : Building #3, Corry Manufacturing Company, Corry, PA
d) Injury/Illness: Multiple finger amputations.
e) Measurements: AT THE POINT OF OPERATION

21. Photo Number	Location on Video
	y

23. Employer Knowledge : The Company is on EAO's "Amputation" strategic initiative list and was sent the letters/information last July. The Company had the two-hand controls available and were not in use. This mechanical press brake and one other mechanical press brake are the only two pieces of equipment not equipped with light curtains.

24. Comments (Employer, Employee, Closing Conference) : The mechanical press brake has had the foot pedal removed and is now locked in the two-hand control mode. Also, a light curtain has been installed and electrically interlocked with the two-hand pedestal control buttons.

25. Other Employer Information :

26. Classification:				
Serious	Knowledge	S or O	Repeat?	Willful?
Y	Y	S	N	N

First Repeat	Second Repeat	Repeat Penalty

Event Date	Event Code	Action Code	Citation Type	Penalty	Abate Date	Final Order
03/25/03	Z Add transaction	A Add	S Serious	1575.00		

EXHIBIT “L”

U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

TINA LINDQUIST,	*	
Plaintiff	*	Case No.
vs.	*	04-249-ENE
HEIM, LP,	*	
Defendant	*	

* * * * *

DEPOSITION OF
JAN OVIATT
July 22, 2005

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1 information from people who are
2 represented by Counsel to sit them in
3 a room and ask questions. And
4 everything is under oath and recorded
5 by our court reporter here. The most
6 important thing that I can tell you
7 is please let me know if I ask any
8 question that is unclear. I only
9 want to ask questions as you
10 understand them and can accurately
11 answer; okay?

12 A. Okay.

13 Q. And if I ask you a question
14 that's unclear, will you let me know
15 that and don't answer it?

16 A. Sure.

17 Q. Okay? What is your current
18 position here at Corry?

19 A. Group leader of maintenance.

20 Q. And where does that fall in
21 the ranking of ---?

22 A. Just under Gary.

23 Q. Just under Gary Merkle
24 (phonetic)?

25 A. Which would be my supervisor.

1 A. Recently, yes.

2 Q. --- served as an operator on
3 those machines?

4 A. Yes.

5 Q. And why were you working in
6 that capacity?

7 A. To meet production.

8 Q. They needed more help, sounds
9 like?

10 A. Correct.

11 Q. Okay. Had you ever operated
12 any other presses before Tina
13 Lindquist's injury for any purpose,
14 whether it be for operation or for
15 maintenance purposes?

16 A. Yes, and to say specifically
17 which ones, I can't, because --- you
18 know, without going back and checking
19 history and which ones I worked on, I
20 couldn't tell you.

21 Q. The particular one we're
22 involved with in this lawsuit is a
23 Heim model 70-6 press brake. Are you
24 familiar with that press brake?

25 A. Yep.

1 Q. Do you know the capacity of
2 that press brake?

3 A. Pounds wise?

4 Q. Yes.

5 A. I'm not sure.

6 Q. Okay. Have you ever operated
7 the Heim press brake before?

8 A. Yes. As far as --- I
9 installed the two-hand control and
10 the foot pedal on it.

11 Q. When did you install the two-
12 hand control and the foot pedal on
13 it?

14 A. I couldn't give you a date.
15 Shortly after we purchased it. I
16 don't know if you have that date or
17 not. I'm not even sure.

18 Q. Now, my client sold it to a
19 different company back in 1978. It
20 was used for 20 years out in
21 Connecticut without any problem. And
22 then it was ultimately sold, I
23 understand, at an auction, and it was
24 purchased by Corry, perhaps in 1999,
25 February, 1999. At least, that's

1 when they purchased the parts and
2 operations book for it.

3 A. That could be.

4 Q. But I don't have a specific
5 purchase date for Corry's purchase of
6 that press brake. But in any event,
7 you installed the foot switch and the
8 two-palm button pedestal after it was
9 purchased?

10 A. Correct.

11 Q. Where did you obtain the foot
12 switch from?

13 A. I believe that was the one
14 that was already on it. I'm not
15 going to swear to that. But just by
16 memory, I think that was already
17 attached to it, because that's all it
18 had on it was a foot pedal.

19 Q. Okay. Do you know if the foot
20 pedal that may have come with the
21 machine when Corry purchased it was
22 the original foot pedal that was sold
23 with the machine over 20 years
24 previously in 1978?

25 A. I'd be surprised if it was,

1 just because of the condition.

2 Q. And what do you mean by that?

3 A. Well, it was a fairly newer
4 model, from what I've seen around.

5 Q. Okay.

6 A. It had the toe guard in it.
7 You know, you had to activate that
8 part before the foot lever would go
9 down.

10 Q. And what feature is that?

11 A. I assume it's a safety
12 feature. Your foot has to be in so
13 far before you can push the pedal
14 down.

15 Q. Right. So there's no
16 accidental tripping of the
17 footswitch?

18 A. Correct.

19 Q. And was there also a housing
20 over the foot switch ---

21 A. Correct.

22 Q. --- so that something couldn't
23 fall on it or you couldn't step on it
24 accidentally?

25 A. Yes.

1 Q. Okay. And based upon those
2 features, and the appearance of the
3 foot switch, you believe that that
4 would not have been the original 1978
5 ---?

6 A. Correct.

7 Q. Okay. Do you know who the
8 manufacturer of that foot switch was?

9 A. No, sir.

10 Q. Who was involved with
11 purchasing that press brake, the Heim
12 press brake?

13 A. To the best of my knowledge it
14 would be Gary Merkle, and I'm not
15 sure of that. That's when my
16 involvement first got started with it
17 was through Gary.

18 Q. Do you know who installed and
19 got this particular press brake up
20 and running after it was purchased?
21 Besides your work, which you
22 mentioned being involved to some
23 extent?

24 A. Probably maintenance got it
25 ready to run, but as far as any

1 Q. Okay. Do you have any
2 involvement with preparing the work
3 instructions for any particular
4 parts?

5 A. No.

6 Q. If we assume that Tina
7 Lindquist was instructed to place her
8 hands inside the die area under the
9 ram to hand-form this part on the
10 mandrel, do you know of any
11 explanation as to why Corry would
12 have instructed her to do that if
13 it's directly contrary to the
14 warnings of the manufacturer of the
15 machine?

16 A. No, I don't.

17 Q. Do you understand that Corry
18 was cited for this by OSHA for this
19 incident?

20 A. I know OSHA was here. I know
21 they were cited. Exactly what, I
22 don't know.

23 Q. Have you spoken with Tina
24 Lindquist?

25 A. No.

1 Q. At all since this accident?

2 A. I don't think at all before or
3 after.

4 Q. Okay. You didn't know her?

5 A. I know who she is. I'm not
6 the most sociable person.

7 Q. You seem fairly sociable
8 today. We must have you on a good
9 day.

10 A. I have to be.

11 Q. Your attorney maybe told you
12 that, I don't know --- I'm just
13 joking. Mr. Nichols told us a little
14 while ago and reported shortly after
15 the accident, that about 15 minutes
16 before the accident, he told --- he
17 suggested to Tina Lindquist not to
18 sit at her chair because she might
19 accidentally hit that foot switch.
20 Have you heard that?

21 A. Yeah.

22 Q. And how did you hear that?

23 A. Hearsay from whoever --- I
24 couldn't --- because typically, I
25 wouldn't think you'd want to be

1 running it sitting down.

2 Q. Why do you think that?

3 A. That same reason. Because you
4 lean forward, what's your foot do?

5 Q. It goes forward also; doesn't
6 it?

7 A. Correct.

8 Q. And if you have your foot
9 inside the housing of the foot
10 switch, and you lean forward to hand-
11 form the part, you could accidentally
12 activate the switch.

13 A. Correct.

14 Q. That could be avoided by
15 positioning the foot switch somewhere
16 else; right? It had a long cord on
17 it?

18 A. It had a cord, you know,
19 'cause --- I don't know if this is a
20 fact, but I would assume there's been
21 positions where you had to have a
22 lengthy cord to set it up, you know,
23 jog it into position and whatnot.

24 Q. An operator could have moved
25 the foot switch to a position where

1 they wouldn't have been able to have
2 their hands in the die area and hit
3 the foot switch at the same time;
4 right?

5 A. Yes.

6 Q. And that would have avoided
7 this accident; couldn't it?

8 A. If she wasn't where she could
9 reach it, yeah.

10 Q. And then, by using the two-
11 palm button switch for this
12 particular run, that would have
13 avoided the accident; right?

14 A. Yep.

15 Q. And by her following the
16 instructions to keep her hands out of
17 the die area, that would have avoided
18 the accident; wouldn't it?

19 A. I'm assuming you're talking
20 about that warning on the front of
21 the machine, yes.

22 Q. And all throughout the
23 instruction manual that accompanied -
24 -- that was fastened to the machine
25 as well. Is that a yes?

1 A. Yes, yes.

2 Q. Have you ever heard of Tina
3 Lindquist making any type of safety
4 complaints before this accident?

5 A. To my recollection, no.
6 Before this accident, no.

7 Q. After the accident?

8 A. Well, I heard she questioned
9 whether she should be having her
10 hands in it or not, and again, like I
11 said, it's hearsay. Who from, don't
12 know. You know how word travels when
13 something like that happens.

14 Q. What did you hear about that?
15 I didn't get the full gist of ---.

16 A. Well, she questioned whether
17 she should be running it with her
18 hands in it. You know, putting her
19 hands in it to pre-form it, let's
20 say. Pre-form the part.

21 Q. Do you know of anyone at Corry
22 who presently thinks that it was
23 appropriate for her to be placing her
24 hands inside that machine in the die
25 area?

1 I think those are all
2 the questions I have, sir.
3 Mr. Hartman, I'm sure, has ---

4 ATTORNEY HARTMAN:

5 I'm just going to be
6 here for a minute.

7 CROSS EXAMINATION

8 BY ATTORNEY HARTMAN:

9 Q. With regard to the foot pedal,
10 you had indicated that you thought it
11 might be a newer version of foot
12 pedal ---

13 A. Uh-huh (yes).

14 Q. --- of its design; am I
15 correct?

16 A. Safety design.

17 Q. And appearance.

18 ATTORNEY ROBINSON:

19 Objection to form.

20 BY ATTORNEY HARTMAN:

21 Q. The appearance, it involved
22 the fact that it had a cover and that
23 you had to stick your foot in and hit
24 it; am I correct?

25 ATTORNEY ROBINSON:

1 Hold on, this is
2 misleading. I'm going to tell
3 you right now. This is
4 misleading, I'm not going to
5 let it go on. He's indicated
6 --- hold on. He's indicated
7 that the design features in
8 addition to the new look of
9 it, which you have
10 conspicuously kept out of your
11 question. So it's misleading
12 and the only thing I can do is
13 try to correct it. But he's
14 indicated a couple of reasons
15 and he left out one
16 significant one.

17 BY ATTORNEY HARTMAN:

18 Q. Did --- absent the design of
19 it, the way it looked to you from the
20 design, did the fact that it was new
21 and shiny or the way the paint looked
22 make you think it was new?

23 A. It was fairly new in
24 appearance. The safety features, the
25 design looks. The paint wasn't all

1 scuffed off. It wasn't dragged
2 through a pile of crap. It didn't
3 have a lot of chips in it. You know,
4 it was fairly clean, fairly new.

5 Q. Okay.

6 A. Appearing.

7 Q. Appearing. That's fine.
8 That's what I needed to know. Now,
9 with regard to the appearance, let's
10 look at the design element.

11 A. Okay.

12 Q. If you would come to learn
13 that in 1978, the design was similar
14 to what you saw, would that change
15 your opinion as to if the foot pedal
16 was new?

17 ATTORNEY ROBINSON:

18 Object to the form of
19 the question. Don't concern
20 yourself with my objection. I
21 don't understand it.

22 A. Can you repeat that?

23 BY ATTORNEY HARTMAN:

24 Q. Okay. You talk about the
25 safety features. If in 1978, the

1 foot pedal had those types of safety
2 features that you saw, would that
3 change your opinion that this foot
4 pedal was a newer design as opposed
5 to it could have been a 1978 one that
6 was well maintained?

7 A. No. Simply because the wear
8 of the machine, the condition of the
9 machine, compared to the foot pedal.

10 Q. Well, can you paint a foot
11 pedal?

12 A. Not as good as --- you can't
13 paint nothing factory color. I don't
14 care how you try. I can't. I mean,
15 you'd have to have pretty good --- I
16 mean, the decals were still on it.

17 Q. Okay. Would you look at the
18 pictures here of the foot pedal and
19 --- I'm sorry, I don't see the
20 decals.

21 ATTORNEY ROBINSON:

22 Yeah, it's on there.

23 You have to look through ---.

24 A. That's ---.

25 ATTORNEY ROBINSON:

1 I could help you if you
2 want me to.

3 A. Yeah. See, there's a decal
4 across the top ---

5 BY ATTORNEY HARTMAN:

6 Q. Okay, the silver ---

7 ATTORNEY ROBINSON:

8 What are we looking at
9 here, sir?

10 ATTORNEY HARTMAN:

11 We're looking at
12 Exhibit N, Corry N, picture
13 number 32.

14 BY ATTORNEY HARTMAN:

15 Q. And you're pointing to what
16 appears to be like a silver patch of
17 ---?

18 A. Silver and black decal on top
19 of some sort.

20 Q. Okay. So that's the decal
21 that you're concerned about?

22 A. Right. And now this is today,
23 or on this date, when I installed it,
24 the condition was obviously newer
25 than that because it hadn't been run